

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Implementation of the )  
Non-Accounting Safeguards of )  
Sections 271 and 272 of the )  
Communications Act of 1934, )  
as amended; )  
)  
and )  
)  
Regulatory Treatment of LEC )  
Provision of Interexchange )  
Services Originating in the LEC's )  
Local Exchange Area )

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-149

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**AUG 15 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**COMMENTS OF THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS**

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August 15, 1996

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## **SUMMARY OF COMMENTS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

In its Comments, the Commonwealth of the Northern Mariana Islands ("Commonwealth") argues that since the Commission is presently addressing the regulatory classification of independent local exchange carriers ("LECs"), it should use this proceeding to resolve the anomalous circumstance presented by MTC, the independent LEC that is the Commonwealth's monopoly local exchange carrier. MTC currently operates as a de facto dominant carrier with virtually no regulatory supervision. As the Commonwealth demonstrates in its Comments, MTC currently provides domestic interexchange services on a nondominant basis even though MTC is apparently not in compliance with the Commission's Competitive Carrier separation requirements. The Commonwealth therefore describes the following three steps that the Commission should take to remedy MTC's currently unregulated operation and its unusual amount of market power:

First, the Commission should explicitly clarify that MTC provides domestic service between the Commonwealth and other U.S. points, thus requiring domestic tariffing and compliance with the Competitive Carrier separation requirements;

Second, the Commission should devise specific safeguards applicable to MTC's monopoly operations in the Commonwealth, such as a strengthened form of the Competitive Carrier separation requirements applied to other incumbent LECs; and

Third, the Commission should clarify that MTC is a dominant carrier under the terms of the International Competitive Carrier decision.

The Commonwealth also offers comments regarding other issues raised in the Commission's Notice. The Commonwealth generally supports the Commission's tentative

conclusion that independent LECs should provide in-region, interstate, domestic, interexchange service subject to a form of separation requirements, although MTC serves as an example why individualized regulatory treatment may sometimes be required between independent LECs. The Commonwealth believes that independent LECs should continue to be classified as dominant if they directly provide in-region, interstate, domestic, interexchange services due to their substantial market power. The Commonwealth supports the Commission's proposal that it apply the same regulatory approach it adopts for the provision of interstate, domestic, interexchange services originating within an independent LEC's local service area to its provision of international services also originating within such a local service area. Lastly, the Commonwealth opposes any sunset of the separate affiliate requirements that the Commission may adopt in this proceeding.

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**COMMENTS OF THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"),<sup>1</sup> by its attorneys and pursuant to the Commission's Notice of Proposed Rulemaking released July 18, 1996 ("Notice"), hereby submits its initial comments in the above-captioned matter.

**I. INTRODUCTION**

The Commonwealth consists of 14 islands strategically located in the North Pacific Ocean approximately 3,300 miles west of Honolulu, 1,200 miles southeast of Tokyo and 50 miles north of the Territory of Guam ("Guam"). The Commonwealth is a self-governing commonwealth in

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<sup>1</sup> These Comments are filed by the Office of the Governor on behalf of the people of the Commonwealth.

political union with and under the sovereignty of the United States. The relationship between the Commonwealth and the United States is governed by the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America."<sup>2</sup>

Micronesian Telecommunications Corporation ("MTC") is the sole provider of both local exchange services and exchange access services, including both switched and special access services, in the Commonwealth. In addition, MTC is the dominant provider of domestic and international off-island services in the Commonwealth. Only one other interexchange carrier ("IXC"), IT&E Overseas, Inc. ("IT&E"), has established a point-of-presence in the Commonwealth.<sup>3</sup> MTC also controls access off the islands by means of its ownership of essential multi-purpose earth station facilities necessary to reach the Pacific region's INTELSAT satellites<sup>4</sup>, as well as through its operation and control of analog microwave facilities which link the Commonwealth with Guam (and, in turn, with various international submarine cables connecting Guam with the rest of the world). MTC's exclusive control over off-island facilities is in the process of being further extended by virtue of its construction of a fiber optic cable between the Commonwealth and Guam which will enhance both the capacity and quality of off-

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<sup>2</sup> See 48 U.S.C. § 1801 note (Supp. 1995), approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263 ("Covenant"). The Covenant was entered into following a plebiscite held under the United Nation's supervision in which the residents of the Commonwealth voted to enter into political union with the United States as a commonwealth.

<sup>3</sup> Comments of IT&E Overseas, Inc. to the Notice of Proposed Rulemaking in CC Dkt. No. 96-61, at 10 (April 19, 1996).

<sup>4</sup> In re Micronesian Telecommunications Corporation; Application for Section 214 Authority to Acquire from Comsat Earth Stations, Inc., Memorandum Opinion, Order and Authorization, 3 FCC Rcd 1617 (1988).

island communications.<sup>5</sup>

MTC is owned and controlled by GTE Hawaiian Telephone Company Incorporated ("Hawaiian Telephone") which, in turn, is owned and controlled by GTE Corporation ("GTE").<sup>6</sup> MTC's parent company, GTE, is one of the world's largest public-traded companies. GTE serves more local access lines than the largest Bell Operating Company ("BOC") in addition to providing other services, such as interexchange services, telecommunications equipment manufacturing and information services.<sup>7</sup> At times it is difficult to distinguish MTC from GTE since GTE has voluntarily included MTC in its access tariff (*i.e.*, GTOC Tariff F.C.C. No. 1)<sup>8</sup>; files rates with the Commission on behalf of MTC<sup>9</sup>; and submits other Commission filings on behalf of MTC.<sup>10</sup>

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<sup>5</sup> On or about June 13, 1996, the Commonwealth legislature passed the Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996, H.B. No. 10-226, SS1, SD2, Special Second Session (1996) ("Fiber Act"), which, *inter alia*, rejected the issuance of a proposed submerged lands lease to GST Telecom, Inc. to lay a fiber optic cable between the Commonwealth and Guam. Although MTC has yet to obtain permits from the CNMI Government for use of non-submerged lands, the Fiber Act appears to effectively clear the way for MTC to proceed with laying and constructing the underseas cable. MTC has publicly announced its plan to have the cable constructed by the end of this year. MTC Hails Manglona Action On Fiber Optic Cable Measure, Saipan Tribune, June 19, 1996.

<sup>6</sup> See, *e.g.*, Comments of GTE Service Corporation, to the Petition for Rulemaking to Provide Rate Integration in File No. AAD 95-86, at 1 n.1 (August 15, 1995). In February 1996, Hawaiian Telephone purchased the remaining minority shares in MTC, increasing its ownership interest in MTC to 100 percent. Report of Independent Public Accountants, Arthur Anderson LLP, at 12 (March 8, 1996).

<sup>7</sup> Michael K. Kellogg *et al.*, Federal Telecommunications Law § 8.1 (1992).

<sup>8</sup> See GTE Telephone Operating Companies Transmittal No. 783, filed April 19, 1993, Description and Justification at 3.

<sup>9</sup> See GTE Telephone Operating Companies Tariff F.C.C. No. 1 at 3.

<sup>10</sup> See, *e.g.*, Reply Comments of GTE Service Corporation and its affiliated domestic telephone and interexchange companies, Notice of Proposed Rulemaking in CC Dkt. No. 96-61 (May 3, 1996); Comments of GTE Service Corporation and its affiliated domestic telephone

As a U.S. commonwealth, the Commonwealth has sought closer integration into the U.S. telecommunications infrastructure. These efforts have recently been successful. For example, the Commonwealth is now scheduled to become part of the North American Numbering Plan effective July 1, 1997.<sup>11</sup> In addition, the Commission recently adopted a Report and Order<sup>12</sup> adopting its proposed rule to extend rate integration to the Commonwealth pursuant to Section 254(g) of the Telecommunications Act of 1996, as amended ("1996 Act").<sup>13</sup>

As demonstrated below, the Commission should address in this proceeding the anomalous situation presented by one independent local exchange carrier, MTC, which appears to have fallen through the cracks of the Commission's regulatory system. Although it is an independent local exchange carrier ("LEC") with dominance in the Commonwealth, MTC does not currently appear to be operating in conformance with the Commission's requirements in its Competitive Carrier and International Competitive Carrier decisions. This proceeding presents an opportunity to correct this problem.

Although the Commonwealth's Comments focus on the regulatory treatment of the monopoly LEC which operates in the Commonwealth, the Commonwealth substantially supports

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operating companies, Notice of Proposed Rulemaking in CC Dkt. No. 96-61 (April 19, 1996); Comments of GTE Service Corporation on behalf of Micronesian Telecommunications Corporation, to Petition for Rulemaking to Provide Rate Integration in AAD 95-86 (August 15, 1995).

<sup>11</sup> See Letter from the Commonwealth of the Northern Mariana Islands to Regina Keeney, Chief, Common Carrier Bureau, at 3 (June 19, 1996).

<sup>12</sup> In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Telecommunications Act of 1934, as amended, Report and Order, FCC 96-331 (August 7, 1996) ("Report and Order").

<sup>13</sup> Pub. L. No. 104-104, 110 Stat. 56.



the proposals advanced in the Notice. However, the Commonwealth opposes any sunset of separate affiliate requirements which may be adopted in this proceeding.

## **II. THE COMMISSION SHOULD ADDRESS MTC'S REGULATORY STATUS IN THIS PROCEEDING**

Any Commission proceeding addressing the regulatory classification of independent LECs must address the anomalous case of MTC. Although MTC is the Commonwealth's dominant provider of domestic and international off-island services, local exchange services and exchange access services, it operates as a non-dominant carrier. Notwithstanding this, MTC apparently does not comply with the Competitive Carrier separation requirements applicable to nondominant carriers.<sup>14</sup> In short, MTC appears to have slipped through the cracks of the Commission's regulatory scheme. Its dominant position in the Commonwealth market today could, in part, be due to the fact that it has not been subject to adequate regulatory oversight. The Commonwealth urges the Commission to address this anomaly.

The Commission's Competitive Carrier ruling requires IXCs affiliated with independent LECs to adhere to separation requirements in order to qualify for nondominant treatment.<sup>15</sup>

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<sup>14</sup> In its Notice, the Commission states that "[a]t this time, there are no independent LECs that are regulated as dominant in the provision of interstate, domestic, interexchange services. In other words, every LEC that provides such services has elected to do so through an affiliate satisfying the Competitive Carrier requirements, rather than providing those services directly subject to dominant regulation." Notice at ¶154. The Commonwealth believes that these statements overlook MTC which is an independent LEC providing domestic services as a nondominant carrier and apparently does not do so through a separate affiliate.

<sup>15</sup> See Fifth Report and Order, 98 FCC 2d at 1191 (1984)("Competitive Carrier"). These conditions require the non-dominant affiliate to: 1) maintain separate books of account; 2) not jointly own transmission or switching facilities with the LEC; and 3) obtain any exchange telephone company services at tariffed rates and conditions. Id. at 1198.

Alternatively, LECs can provide long distance services directly (i.e., not through a separate subsidiary), but they will be subject to regulation as dominant carriers. The Commission's International Competitive Carrier decision found that the non-contiguous domestic carriers were nondominant for regulatory purposes.<sup>16</sup>

At present, MTC does not appear to be complying with the Competitive Carrier separation requirements. Even though it provides service between the Commonwealth and the contiguous U.S. as well as Alaska and Hawaii, MTC apparently does not view itself as a provider of domestic services. GTE has previously argued before the Commission that the GTE Consent Decree permitted Hawaiian Telephone, and its subsidiary MTC, to provide international services. In order to comply with this, MTC has apparently tariffed all of its off-island services, including service to U.S. points, as international services.<sup>17</sup> Even though the 1996 Act superseded the GTE Consent Decree approximately six months ago, MTC still continues to serve U.S. domestic points from the Commonwealth as though they were international points. Consequently, MTC does not comply with the Commission's requirements applicable to domestic, interexchange services, including the Competitive Carrier separation requirements.

Compounding this problem is the fact that MTC also takes the position that it is a non-dominant international carrier. Since the Commission's International Competitive Carrier ruling did not expressly mention MTC, MTC has repeatedly argued that it is a nondominant

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<sup>16</sup> International Competitive Carrier Policies, 102 FCC 2d 813 (1985), recon. denied, 60 R.R. 2d 1435 (1986)("International Competitive Carrier").

<sup>17</sup> MTC does not have a tariff on file covering domestic services. Up until the 1996 Act was enacted, presumably MTC was prohibited from providing domestic service by the GTE Consent Decree.

international carrier.<sup>18</sup>

The net result of these two factors is that, despite its blatant dominance, MTC is providing domestic interexchange services on a nondominant basis apparently absent a separate subsidiary.<sup>19</sup> Currently, MTC operates subject to almost no Commission regulatory safeguards. The Commonwealth submits that the Commission should take the opportunity presented by this proceeding to rectify this. In particular, the Commission should take the following actions.

First, the Commission should clarify that service provided by MTC between the Commonwealth and other U.S. points is domestic service and accordingly must be tariffed as such. There is no legitimate question that the Commonwealth is a domestic point such that traffic between the Commonwealth and other U.S. points is domestic traffic. The 1996 Act's express inclusion of insular areas within the scope of the Act<sup>20</sup> as well as the Commission's recent decision adopting rules to implement rate integration<sup>21</sup> vis-a-vis the Commonwealth make this clear.

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<sup>18</sup> See, e.g., Opposition of MTC, File No. ITC-96-315, filed July 22, 1996; In the Matter of Micronesian Telecommunications Corporation, Transmittal No. 82, 8 FCC Rcd 4434 (1993); and In the Matter of Micronesian Telecommunications Corporation, Transmittal No. 85, 8 FCC Rcd 4141 (1993).

<sup>19</sup> This would be in violation of the Commission's Competitive Carrier ruling, cited supra at note 15.

<sup>20</sup> See 1996 Act at §254.

<sup>21</sup> Report and Order at para. 66-73. Moreover, a 1982 Presidential proclamation declared the Communications Act of 1934, as amended, applicable to the Commonwealth. See Proclamation No. 4938, Application of Certain United States Laws to the Northern Mariana Islands (1982). Perhaps most importantly, the Commission has expressly concluded that MTC service between the Commonwealth, on the one hand, and Guam, Hawaii and the United States mainland, on the other, is domestic. See In the Matter of Micronesian Telecommunications Corp., 2 FCC Rcd 1105 (1987).

Second, the Commission should devise specific safeguards applicable to MTC's substantial monopoly power in the Commonwealth. In the unique case of MTC, the Competitive Carrier separation requirements are probably not adequate to prevent anticompetitive abuse. MTC wields market power in a manner unlike any other independent LEC operating today. As MTC is the monopoly provider of local exchange services in the Commonwealth as well as dominant provider of interstate and international off-island services, MTC can potentially cross-subsidize its off-island services with local exchange monopoly revenues. In addition, since MTC is a monopoly provider of exchange access services and controls access to all off-island facilities,<sup>22</sup> MTC has the incentive and ability to discriminate against competitors.

These concerns recently led the Commonwealth to file Comments with the Commission addressing MTC's Section 214 Application filed on May 28, 1996 to establish direct IMTS service between the Commonwealth and China.<sup>23</sup> In its Comments, a copy of which are attached hereto, the Commonwealth argued that the Commission should clarify MTC's status as a dominant carrier and subject it to full structural separation in its provision of off-island services. Specifically, the Commonwealth argued that MTC should only be permitted to provide the requested services through a meaningful separate subsidiary requirement. The Commonwealth proposed that the Commission apply to MTC the same structural and transactional requirements

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<sup>22</sup> According to the Commission, control of bottleneck facilities is "prima facie" evidence of market power. Notice at ¶134, citing Competitive Carrier First Report and Order, 85 FCC 2d at 21, ¶58.

<sup>23</sup> See Comments of the Commonwealth, File No. ITC-96-315, filed July 12, 1996.

which Section 272 of the 1996 Act imposes on BOC in-region interexchange services.<sup>24</sup> In addition, the Commonwealth argued that the Commission should make clear that MTC's international affiliate 1) may not jointly own transmission or switching facilities with MTC (i.e., the LEC) and 2) must obtain LEC services at tariffed rates and conditions. These two conditions have been separately established by the Commission applicable to IXCs affiliated with independent LECs.<sup>25</sup> However, even though it is an independent LEC which provides domestic interstate services, MTC does not appear to comply with such conditions. Nor does MTC appear to conduct its operations as a dominant carrier.

In sum, in a monopoly circumstance as unique and strong as that held by MTC in the Commonwealth, a special separate subsidiary requirement such as that proposed by the Commonwealth in its attached Comments addressing MTC's China 214 Application would help ensure that anticompetitive activities do not occur. In the alternative, and at a minimum, the Commission should expressly extend to MTC separation requirements adopted in this proceeding applicable to independent LEC in-region, interstate, domestic interexchange services.

Third, the Commission should clarify that MTC is dominant under its International Competitive Carrier decision. The Commonwealth recently addressed this issue in the context of its Reply filed in the China 214 proceeding.<sup>26</sup> The Commonwealth strongly believes that

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<sup>24</sup> Section 272 requires the separate affiliate to 1) operate independently from the BOC; 2) maintain separate books, records and accounts; 3) have separate officers, directors, and employees; 4) not obtain credit under terms that would permit a creditor, upon default, to have recourse to the assets of the BOC; and 5) conduct all transactions with the BOC on an arm's length basis and be preserved in writing available for public inspection. See 1996 Act, 47 U.S.C. §272(b).

<sup>25</sup> See supra at note 15.

<sup>26</sup> Reply of the Commonwealth, File No. ITC-96-315 at 4-5.

MTC is dominant under the Commission's International Competitive Carrier ruling. In its International Competitive Carrier decision adopted on October 31, 1985, the Commission ruled that MTC's parent company, GTE Hawaiian, and similarly situated carriers were dominant. The reason that MTC was not covered by these policies at the time is simple: the Commonwealth only became a U.S. commonwealth on November 3, 1986.<sup>27</sup> At the time, MTC was not a noncontiguous domestic carrier. Nonetheless, MTC is now a noncontiguous domestic carrier and, as such, should be declared dominant.<sup>28</sup> MTC wields at least as much market power as any of the carriers that the Commission specifically found to be dominant in its ruling. Most importantly, MTC does not face effective competition in Commonwealth markets, and this would be the basis for a determination that MTC is dominant under the Commission's International Competitive Carrier ruling.

MTC has been allowed to operate outside of appropriate regulatory oversight for many years. With the 1996 Act's supplanting the GTE Consent Decree, the time is right for the Commission to rectify this anomaly in this proceeding.

### **III. OTHER ISSUES**

The Commonwealth generally supports the Commission's tentative conclusion that it should require independent LECs to provide in-region, interstate, domestic, interexchange services

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<sup>27</sup> Prior to that, since July 18, 1947, the Commonwealth was part of the United Nations Trust Territory of the Pacific Islands ("Trust Territory") and was apparently considered a foreign point.

<sup>28</sup> MTC, therefore, has been improperly operating outside of the International Competitive Carrier requirements for almost a decade.

subject to some form of separation requirements.<sup>29</sup> At the same time, the Commonwealth urges the Commission to take into account unique circumstances--such as that presented by MTC--that could warrant different regulatory treatment among the independent LECs.

The Commonwealth believes that independent LECs should continue to be classified as dominant if they directly provide in-region, interstate, domestic, interexchange services. The substantial market power acquired by MTC--which has provided interstate, domestic, interexchange services as a dominant carrier absent adhering to any safeguards--may best make the case for maintaining this requirement.<sup>30</sup> Absent the Competitive Carrier requirements, the Commonwealth believes that an independent LEC (such as MTC) would be able to use its market power in local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-region, interstate, domestic, interexchange services significantly above competitive levels by restricting output. Accordingly, the Commonwealth urges the Commission to retain the Competitive Carrier separation requirements, although it is the position of the Commonwealth that more stringent safeguards are required to effectively regulate MTC's monopoly power.

The Commonwealth also supports the Commission's proposal to apply the same regulatory approach that it adopts for independent LEC's provision of interstate, domestic, interexchange

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<sup>29</sup> Notice at ¶158. In addition to this market power, MTC also meets both parts of the Commission's proposed definition of an "incumbent" independent LEC set forth in the Notice. Through its parent company, GTE, MTC is a member of the National Exchange Carrier Association ("NECA") and was providing service prior to the implementation of the 1996 Act. Id. at ¶153. MTC is therefore not part of the class of new market entrants that the Commission should exempt from its separate affiliate requirements.

<sup>30</sup> Id. at ¶157, 158.

services originating within its local service area to an independent LEC's provision of international services originating within its local service area.<sup>31</sup> In this regard, the Commonwealth urges the Commission to expressly declare that MTC is covered by both of these policies, to the extent it provides both international and domestic services originating in its service area in the Commonwealth.

Finally, the Commonwealth opposes any sunset of the separate affiliate requirements the Commission may adopt in this proceeding.<sup>32</sup> The sunset provision established under Section 272(f)(1) of the 1996 Act has no application to independent LECs; is limited to the BOCs. Moreover, given the unique circumstances prevailing in insular areas such as the Commonwealth, there would appear to be little basis for eliminating any safeguards adopted in this proceeding in the near future. The Commonwealth is a distant, remotely located U.S. point with a population of only approximately 56,656 persons.<sup>33</sup> As indicated above, MTC's monopoly power in the Commonwealth is extensive. Thus, there would appear little basis at this time for adopting a sunset provision in connection with any safeguards applicable to independent LECs in the Commonwealth.

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<sup>31</sup> Notice at ¶160.

<sup>32</sup> Id. at ¶162.

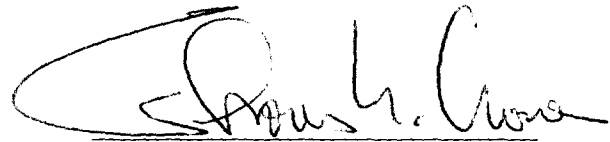
<sup>33</sup> The 1990 U.S. Census totaled the Commonwealth's population at 43,345. Estimates made in 1994, which accounted for continuing growth, estimated the Commonwealth's population to be 56,656. A Report on the State of the Islands, U.S. Department of the Interior, Office of Insular Affairs, Aug. 1995 at 27.



#### IV. CONCLUSION

Accordingly, the Commonwealth believes that the Commission's Notice presents an opportunity for the Commission to address the anomalous case presented by MTC. The Commission should take those steps proposed herein to ensure that MTC no longer operates in the Commonwealth absent appropriate regulatory safeguards.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", is written over a horizontal line.

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Dated: August 15, 1996

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International Message Telecommunications )  
Service Between the Commonwealth of the )  
Northern Mariana Islands and the People's )  
Republic Of China )

File No. ITC-96-315

COMMENTS OF THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS

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July 12, 1996

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## **SUMMARY OF COMMENTS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

In its Comments, the Commonwealth of the Northern Mariana Islands ("Commonwealth") argues that the Section 214 Application of Micronesian Telecommunications Corporation ("MTC") should only be granted with appropriate regulatory safeguards. MTC is the dominant provider of all telecommunications services in the Commonwealth. In addition to being the sole provider of both local exchange and exchange access services, MTC is the dominant provider of domestic and international off-island services. Only one other interexchange carrier has established a point-of-presence in the Commonwealth. MTC also controls access to all off-island facilities by means of its ownership of earth station facilities necessary to reach the Pacific region's INTELSAT satellites and a microwave link to the Territory of Guam (which interconnects with various international cables). This control over bottleneck facilities will be extended when MTC puts into operation by the end of the year a fiber optic cable between the Commonwealth and Guam. Moreover, MTC is owned and controlled by a dominant carrier, GTE Hawaiian Telephone Company Incorporated ("Hawaiian Telephone"), a subsidiary of GTE Corporation ("GTE"). At times it is difficult to distinguish MTC from its parent companies since GTE submits many filings at the Commission on behalf of MTC.

As a result of MTC's market power in the Commonwealth market, MTC has both the incentive and ability to engage in anticompetitive behavior. Specifically, MTC can cross-subsidize its off-island operations (which face limited competition) with revenues from its monopoly local exchange operations. In addition, MTC's control over bottleneck facilities gives it the ability to discriminate unfavorably against competitors. In a Memorandum filed in federal

District Court, one of MTC's competitors, IT&E Overseas, Inc., alleged that MTC has in fact engaged in such anticompetitive activity.

As a result, the Commonwealth believes that MTC's Application should not be granted unless the Commission applies appropriate regulatory safeguards to MTC's provision of IMTS to China. The Commonwealth believes that MTC's Application should be conditioned on the following:

First, the Commission should clarify MTC's status as a dominant carrier. Although the Commission has determined that MTC's immediate parent, Hawaiian Telephone, is a dominant carrier, the issue has never been squarely addressed by the Commission *vis-a-vis* MTC.

Second, the Commission should condition a grant of MTC's Application on its provision of competitive services through a subsidiary separate from its local exchange operation. Such a step would ensure that Commonwealth ratepayers do not cross-subsidize MTC's existing or future off-island operations. The subsidiary could be modelled after the Section 272(b) separate subsidiary requirement which the Telecommunications Act of 1996 applies to Bell Operating Company provision of in-region services.

As a last resort, the Commission could subject MTC to special non-structural safeguards. While the Commonwealth believes that this alternative would not be adequate, it may afford at least some protection against anticompetitive abuse. Such non-structural safeguards are described in greater detail in the Commonwealth's Comments.

In summary, MTC's Application should not be granted unless the Commission applies appropriate safeguards to MTC's off-island services.

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**COMMENTS OF THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth")<sup>1</sup>, by its attorneys, pursuant to Section 63.52(c) of the FCC's Rules, 47 C.F.R. § 63.52(c) (1995), respectfully submits its Comments addressing the Application of the Micronesian Telecommunications Corporation ("MTC") filed on May 28, 1996<sup>2</sup> for a certificate pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate 512 Kbps satellite capacity to establish direct international message telecommunications service ("IMTS") between the Commonwealth and the People's Republic of China ("China"). As demonstrated

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<sup>1</sup> These Comments are submitted by the Office of the Governor on behalf of the people of the Commonwealth.

<sup>2</sup> The Commission placed MTC's application on Public Notice on June 21, 1996. Public Notice, ITC-96-315 (June 21, 1996).

below, MTC's Application should not be granted unless appropriate regulatory safeguards are imposed as a condition to the requested authority.

## **I. INTRODUCTION**

The Commonwealth consists of 14 islands strategically located in the North Pacific Ocean approximately 3,300 miles west of Honolulu, 1,200 miles southeast of Tokyo and 50 miles north of the Territory of Guam ("Guam"). The Commonwealth is a self-governing commonwealth in political union with and under the sovereignty of the United States. The relationship between the Commonwealth and the United States is governed by the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America."<sup>3</sup> Among other things, the Covenant provides that persons born in the Commonwealth both before and after it took effect are citizens of the U.S.<sup>4</sup> Subject to certain exceptions, federal law applies to the Commonwealth.<sup>5</sup>

MTC is the sole provider of both local exchange services and exchange access services, including both switched and special access services, in the Commonwealth. In addition, MTC is the dominant provider of domestic and international off-island services in the Commonwealth. Only one other interexchange carrier ("IXC"), IT&E Overseas, Inc. ("IT&E"), has established a

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<sup>3</sup> See 48 U.S.C. § 1801 note (Supp. 1995), approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263 ("Covenant"). The Covenant was entered into following a plebiscite held under the United Nation's supervision in which the residents of the Commonwealth voted to enter into political union with the United States as a commonwealth.

<sup>4</sup> Covenant at §301.

<sup>5</sup> A Report on the State of the Islands, U.S. Department of Interior, Office of Insular Affairs, Aug. 1995 at 27.



point-of-presence in the Commonwealth.<sup>6</sup> MTC also controls access off the islands by means of its ownership of essential multi-purpose earth station facilities necessary to reach the Pacific region's INTELSAT satellites<sup>7</sup>, as well as through its operation and control of analog microwave facilities which link the Commonwealth with Guam (and, in turn, with various international submarine cables connecting Guam with the rest of the world). MTC's exclusive control over off-island facilities is in the process of being further extended by virtue of its construction of a fiber optic cable between the Commonwealth and Guam which will enhance both the capacity and quality of off-island communications.<sup>8</sup>

MTC is owned and controlled by GTE Hawaiian Telephone Company Incorporated ("Hawaiian Telephone") which, in turn, is owned and controlled by GTE Corporation ("GTE").<sup>9</sup> MTC's parent company, GTE, is one of the world's largest public-traded companies. In addition,

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<sup>6</sup> Comments of IT&E Overseas, Inc. to the Notice of Proposed Rulemaking in CC Dkt. No. 96-61, at 10 (April 19, 1996).

<sup>7</sup> In re Micronesian Telecommunications Corporation; Application for Section 214 Authority to Acquire from Comsat Earth Stations, Inc., Memorandum Opinion, Order and Authorization, 3 FCC Rcd 1617 (1988).

<sup>8</sup> On or about June 13, 1996, the Commonwealth legislature passed the Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996, H.B. No. 10-226, SS1, SD2, Special Second Session (1996) ("Fiber Act"), which, inter alia, rejected the issuance of a proposed submerged lands lease to GST Telecom, Inc. to lay a fiber optic cable between the Commonwealth and Guam. Although MTC has yet to obtain permits from the CNMI Government for use of non-submerged lands, the Fiber Act appears to effectively clear the way for MTC to proceed with laying and constructing the underseas cable. MTC has publicly announced its plan to have the cable constructed by the end of this year. MTC Hails Manglona Action On Fiber Optic Cable Measure, Saipan Tribune, June 19, 1996.

<sup>9</sup> See, e.g., Comments of GTE Service Corporation, to the Petition for Rulemaking to Provide Rate Integration in File No. AAD 95-86, at 1 n.1 (August 15, 1995). In February 1996, Hawaiian Telephone purchased the remaining minority shares in MTC, increasing its ownership interest in MTC to 100 percent. Report of Independent Public Accountants, Arthur Anderson LLP, at 12 (March 8, 1996).